

RECORDING REQUESTED BY:

Mr. Thomas Foster
Foster-Gardner, Inc.
1577 First Street
Coachella, California

DOC # 2002-126412

03/12/2002 08:00A Fee:49.00

Page 1 of 15

Recorded in Official Records
County of Riverside

Gary L. Orsa

Assessor, County Clerk & Recorder



WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
Southern California Cleanup Operations Branch
5796 Corporate Avenue
Cypress, CA 90630
ATTENTION: Mr. Thomas Cota, Chief

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SPACE ABO

HAZARDOUS WASTE COVENANT

(Health and Safety Code section 25355.5)



ENVIRONMENTAL RESTRICTION (Civil Code section 1471(c))

(Re: Foster-Gardner, Inc., Assessor's Parcel Number 7652-400-08; and Foster Manufacturing, Inc., Assessor's Parcel Number 7652-400-07)

This Covenant and Agreement ("Covenant") is made by and between Foster-Gardner, Inc., Foster Manufacturing, Inc., and their successors and assigns (the "Covenantors"), the current owner of property situated in Coachella, County of Riverside, State of California, described in Exhibit "A," attached hereto and incorporated herein by this reference (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471(c), the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code ("H&SC") section 25260. The Covenantor and the Department, collectively referred to as the "Parties," hereby agree, pursuant to Civil Code section 1471(c) and H&SC section 25355.5(a)(1)(C) that the use of the Property be restricted as set forth in this Covenant.

ARTICLE I
STATEMENT OF FACTS

1.01. The Property, totaling approximately 2.79 acres, is more particularly described and depicted in Exhibit "A," attached hereto and incorporated herein by this reference. This property is more specifically described as Foster-Gardner, Inc., Riverside County Assessor's Parcel Nos.: 7651-400-07 and 7652-400-08. (~~SEE~~ *Schedule A*)

1.02. Covenantor is remediating the Property under the supervision and authority of the Department pursuant to a Removal Action Workplan, which the covenantor provided in accordance with the Imminent and Substantial Endangerment Order and Remedial Action Order 92/93-004, issued by the Department on August 21, 1992 and an Enforceable Agreement (Agreement) between Covenantor and the Department. The Department has determined (under its own processes and without concurrence by the Covenantor) that hazardous substances, as defined in H&SC section 25316, which are also hazardous wastes as defined in H&SC section 25117 and hazardous materials as defined in H&SC section 25260 remain in the soil and groundwater in and under portions of the Property. The Removal Action Workplan provides that a deed restriction will be required as part of the site remediation. The Removal Action Workplan also identifies removal alternatives for compounds of potential concern in soil and groundwater at the Property. Compounds of potential concern in the soil are organochlorine pesticides and volatile organic compounds. Compounds of potential concern in the groundwater include ammonia, volatile organic compounds and organochlorine pesticides. The Removal Action Workplan, containing a Final Health Risk Assessment, was approved by the Department on March 20, 1997. Foster-Gardner has also prepared an Operations and Maintenance Plan, dated September 1, 2000, which describes methods for monitoring the efficiency of the groundwater removal alternative selected in the Removal Action Workplan. The monitoring methods involve the use of groundwater monitoring wells ("Monitoring Wells"). The locations of the Monitoring Wells are shown on Exhibit "B."

1.03. Groundwater in the vicinity of the Property is reported to be approximately 8.5 to approximately 10.5 feet below ground surface. Contaminants in the groundwater are reported to include ammonia (up to 7,100,000 ug/L), 1,2-dichloropropane (up to 290 ug/L), 1,2-dichloroethane (up to 37 ug/L), benzene (up to 3.7 ug/L), and 1,2-dibromomethane (up to 45 ug/L). Maximum contaminant levels are 35,000 ug/L for ammonia, 5 ug/L for 1,2-dichloropropane, 5 ug/L for 1,2-dichloroethane, 5 ug/L for benzene, and 0.05 ug/L for 1,2-dibromomethane. Using its own processes and without concurrence by the covenantors, the Department has determined that the groundwater contaminants exceed acceptable health risk-based levels.

ARTICLE II DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

2.03. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

ARTICLE III GENERAL PROVISIONS

3.01. Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to H&SC section 25355.5(a)(1)(C) and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property; (c) is for the benefit of, and is enforceable by the Department; and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants. Pursuant to H&SC section 25355.5(a)(1)(C), this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471(b), all successive owners of the Property are expressly bound hereby for the benefit of the Department.

3.03. Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease or sublease of the Property, or any portion thereof, the owner, lessor, or sublessor shall give the buyer, lessee, or sublessee notice that hazardous substances are located on or beneath the Property.

3.04. Incorporation into Deeds, Leases and Subleases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds, leases and subleases for any portion of the Property.

3.05. Conveyance of Property. The Owner shall provide notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

ARTICLE IV RESTRICTIONS

4.01. Prohibited Uses. The Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.

4.02. Soil Management

- (a) No activities that will disturb the soil at or below 8.5 feet below ground level (e.g., excavation, grading, removal, trenching, filling, earth movement or mining) shall be allowed on the Property without a Soil Management Plan and a Health and Safety Plan approved by the Department.
- (b) Any contaminated soils brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of state and federal law.
- (c) The Owner shall provide the Department written notice at least fourteen (14) days prior to any filling, grading, mining or excavating on the Property, or any building activity that will cause significant disturbance of the soils.

4.03. Prohibited Activities. The following activities shall not be conducted at the Property:

- (a) Raising of food (livestock, food crops, etc.).
- (b) Drilling for water, oil, or gas.
- (c) Groundwater:

(1) The construction or drilling of any well except as required by government environmental regulators to investigate and remediate groundwater;

(2) The extraction, utilization, or consumption of any groundwater on the Property, except that groundwater may be extracted :

(A) as required by government environmental regulators to investigate and remediate groundwater;

(B) for dewatering that is necessary during construction, maintenance and repair where all requirements of a Groundwater Management Plan as approved by DTSC has been met, and if required by the approved Groundwater Management Plan, the groundwater is containerized, characterized and transported offsite in compliance with all federal and state laws, regulations and ordinances.

(3) The discharge of groundwater onto the surface of the Property.

4.04. Non-Interference with Cap. Covenantor agrees:

- (a) Activities that are reasonably likely to disturb the integrity of Cap (e.g. excavation, grading, removal, trenching, filling, earth movement, or mining) shall not be permitted on the Capped Property without prior review and approval by the Department.
- (b) All uses and development of the Capped Property shall preserve the integrity of the Cap.
- (c) The Cap shall not be altered without written approval by the Department.
- (d) Covenantor shall notify the Department of each of the following: (i) the type, cause, location and date of any damage to the integrity of the Cap and (ii) the type and date of repair of such damage. Notification to the Department shall be made as provided below within ten (10) working days of both the discovery of any such disturbance and the completion of any repairs. Timely and accurate notification by any Owner or Occupant shall satisfy this requirement on behalf of all other Owners and Occupants.

4.05. Non-Interference with Groundwater Wells. Covenantor agrees:

- (a) Activities that may disturb the Monitoring Wells shall not be permitted on the Property without prior review and approval by the Department.
- (b) All uses and development of the Capped Property shall preserve the integrity of the Monitoring Wells.
- (c) The Monitoring Wells shall not be altered or abandoned without written approval by the Department.
- (d) Covenantor shall notify the Department of each of the following: (i) the type, cause, location and date of any damage to the Monitoring Wells and (ii) the type and date of repair of such damage. Notification to the Department shall be made as provided below within ten (10) working days of both the discovery of any such disturbance and the completion of any repairs. Timely and accurate notification by any Owner or Occupant shall satisfy this requirement on behalf of all other Owners and Occupants.

4.06. Access for Department. The Department and its designees shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment.

4.07. Access for Implementing Operation and Maintenance. The entity or person responsible for implementing the Operation and Maintenance Agreement shall have reasonable right of entry and access to the Property for the purpose of implementing the Agreement until the Department determines that no further Operation and Maintenance is required.

ARTICLE V ENFORCEMENT

5.01. Enforcement. Failure of the Covenantor, Owner or Occupant to comply with any of the Restrictions specifically applicable to it may be grounds for the Department to require that the Covenantor or Owner modify or remove any improvements ("Improvements" herein shall mean all buildings, roads, driveways, and paved parking areas) constructed or placed upon any portion of the Property in violation of the Restrictions. This Covenant shall be enforceable by the Department pursuant to Health and Safety Code, Division 20, Chapter 6.5, Article 8 (commencing with section 25180) or other applicable law. The Department and the Covenantors each reserve all of their respective legal rights, remedies and defenses with respect to any enforcement actions that may be pursued hereunder.

ARTICLE VI
VARIANCE, TERMINATION, AND TERM

6.01. Variance. Covenantor, or any other interested party, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&SC section 25233.

6.02. Termination. Covenantor, or any other interested party, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with H&SC section 25234.

6.03. Term. Unless ended in accordance with the Termination paragraph above, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII
MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02. Department References. All references to the Department include successor agencies/departments or other successor entity.

7.03. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Riverside within ten (10) days of the Covenantor's receipt of a fully executed original.

7.04. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner:	Mr. Thomas Foster Foster-Gardner, Inc. 1577 First Street Coachella, California 92236
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To Department: Mr. Greg Holmes, Unit Chief
Department of Toxic Substances Control
Southern California Cleanup Operations Branch
5796 Corporate Avenue
Cypress, California 90630

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.05. Partial Invalidity. If any portion of the Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.06 Statutory References. All statutory references include successor provisions.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: Foster-Gardner, Inc., *FOSTER MANUFACTURING INC.*

By: *Thomas Foster* Date: *1/23/02*
Title: Thomas Foster, Vice-President

Department of Toxic Substances Control

By: *Thomas M. Cota* Date: *2/7/02*
Title: Thomas M. Cota, Chief
Southern California Cleanup Operations Branch, Cypress

STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

On this 23rd day of JANUARY, in the year 2002,

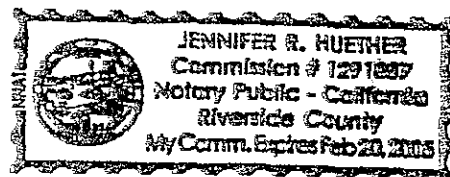
before me JENNIFER HUETHER - NOTARY, personally appeared

THOMAS FOSTER

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Jennifer Huether



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of ORANGE

SS.

On FEB 07, 2002 before me, CHRISTOPHER CHEEKING CHEW Notary Public,

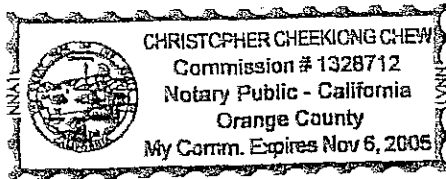
Date

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared THOMAS MICHAEL COTA

Name(s) of Signer(s)

- ☐ personally known to me
☒ proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: HAZARDOUS WASTE COVENANT

Document Date: 2-7-02 Number of Pages: 09

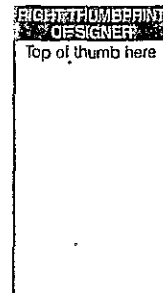
Signer(s) Other Than Named Above: THOMAS FOSTER

Capacity(ies) Claimed by Signer

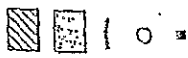
Signer's Name: THOMAS MICHAEL COTA

- ☐ Individual
☒ Corporate Officer — Title(s): CHIEF, SOUTHERN CALIFORNIA CLEAN UP OPERATIONS BRANCH, CYRESS
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____



EXPLANATION



ASPHALT PAVEMENT

SPRAYED WITH DUST-SUPPRESSANT EMULSION

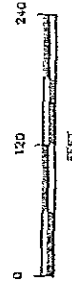
ASPHALT BERM

PROCESS WATER STORAGE TANK

PROCESS WATER SUMP

NOTE: LOCATIONS OF BUILDINGS ARE APPROXIMATE

EXHIBIT A



FOSTER-GARDNER
COACHELLA, CALIFORNIA

SITE VICINITY

HARGIST+ASSOCIATES, INC.

FIGURE

PREP BY: HGC REV BY: HGC RPT NO. 208.11 4-10-12.8

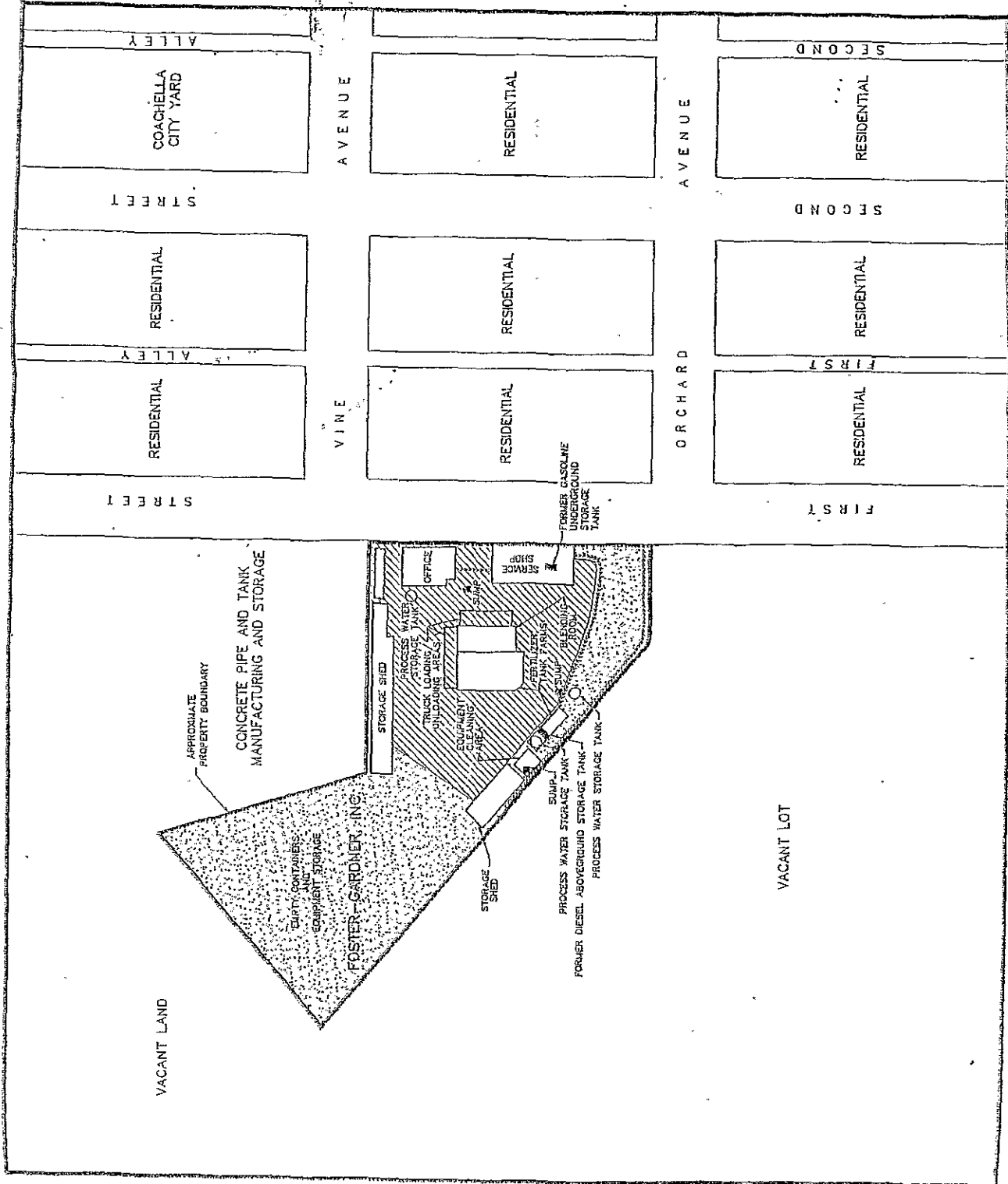


EXHIBIT B

EXPLANATION

CITY WELL

10.2

COACHELLA CITY WELL No. 2 (INACTIVE)

MONITOR WELL INSTALLED BY DELTA ENVIRONMENTAL CONSULTANTS (LOCATION APPROXIMATE)

MONITOR WELL INSTALLED BY WOODWARD-CUNNINGHAM CONSULTANTS, INC. (LOCATION APPROXIMATE)

MONITOR WELL INSTALLED BY HARGIS + ASSOCIATES, INC.

STATIC WATER LEVEL ELEVATION IN FEET MEAN SEA LEVEL

WATER LEVEL ELEVATION NOT CONTOURED

-75.8

CONTOUR LINE OF EQUAL WATER LEVEL ELEVATIONS IN FEET MEAN SEA LEVEL
DASHED WHERE APPROXIMATE, QUERIED WHERE INFERRED

NOTE: WATER LEVELS MEASURED MAY 15, 1995



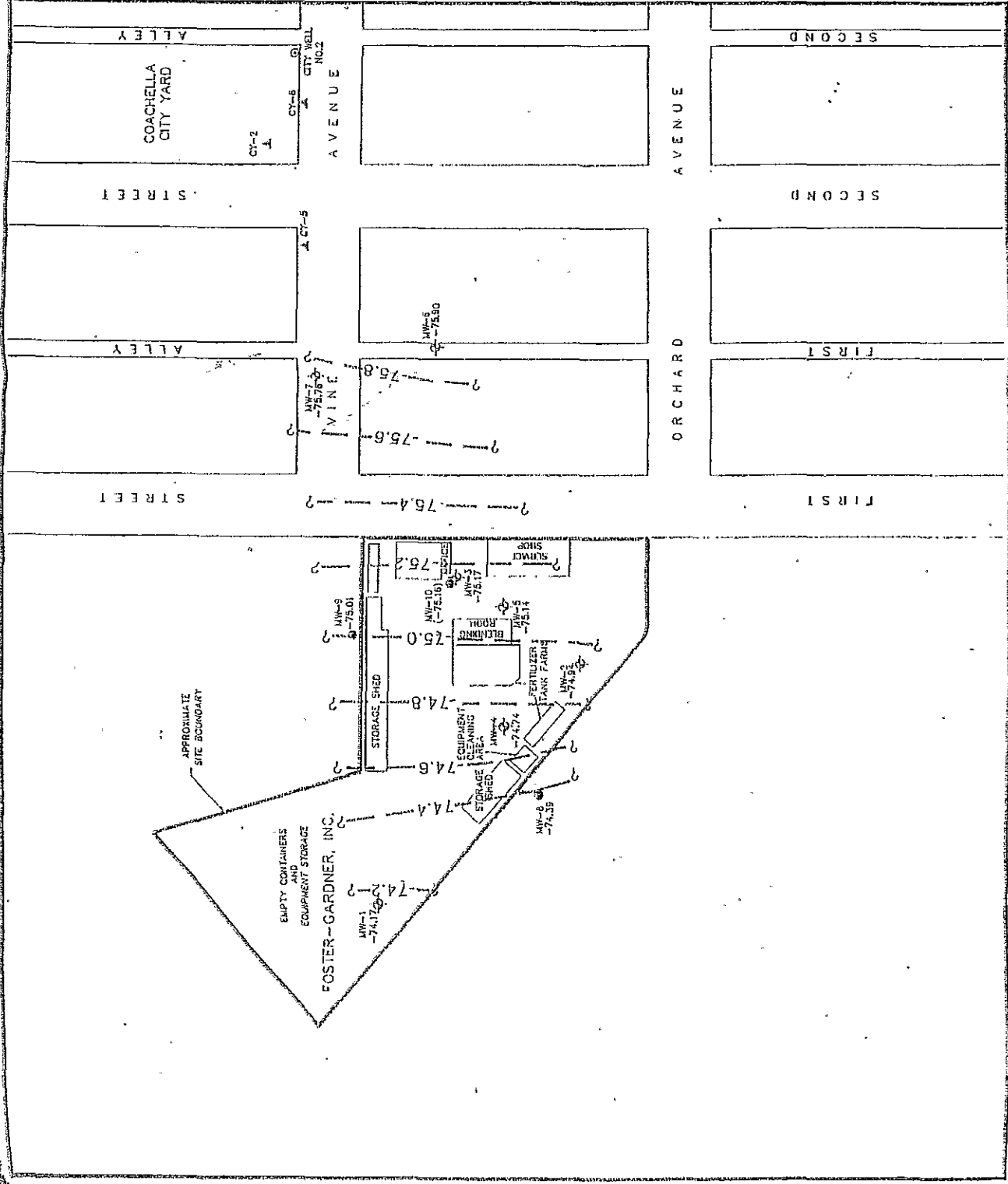
FOSTER-GARDNER
COACHELLA, CALIFORNIA

WATER LEVEL ELEVATIONS
MAY 1995

HARGIS + ASSOCIATES, INC.

FIGURE

PREP BY SWE REV BY JG NPT NO. 208.11 250-02



SCHEDULE A

THE LAND REFERRED TO HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF RIVERSIDE, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

THAT PORTION OF LOT(S) 4 OF COACHELLA LAND COMPANY'S SUBDIVISION OF SECTION 5, TOWNSHIP 6 SOUTH, RANGE 8 EAST, SAN BERNARDINO BASE AND MERIDIAN, AS SHOWN BY MAP ON FILE IN BOOK 4 PAGE(S) 53, OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, TOGETHER WITH THAT PORTION OF LOT A OF AMENDED MAP OF COLBERT'S ADDITION, ON FILE IN BOOK 18 PAGE 26, OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST EASTERLY CORNER OF SAID LOT 4; THENCE SOUTHWEST 450.00 FEET ON THE SOUTHEAST LINES OF SAID LOT 4 AND SAID LOT A TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING SOUTHWEST 110.00 FEET ON THE SOUTHEAST LINE OF SAID LOT A; THENCE NORTHWEST 270.00 FEET, PARALLEL WITH THE NORTHEAST LINE OF SAID LOT 4; THENCE NORTHEAST 110.00 FEET, PARALLEL WITH THE SOUTHEAST LINE OF SAID LOT A; THENCE SOUTHEAST 270.00 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL 2:

THAT PORTION OF LOT 4 OF COACHELLA LAND COMPANY'S SUBDIVISION OF SECTION 5, TOWNSHIP 6 SOUTH, RANGE 8 EAST, SAN BERNARDINO BASE AND MERIDIAN, AS SHOWN BY MAP ON FILE IN BOOK 4 PAGE(S) 53, OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST EASTERLY CORNER OF SAID LOT 4; THENCE SOUTHWEST 560.00 FEET ON THE SOUTHEAST LINE OF SAID LOT 4 AND THE SOUTHEAST LINE OF LOT A OF THE AMENDED MAP OF COLBERT'S ADDITION RECORDED IN BOOK 18 PAGE 26, OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA; THENCE NORTHWEST 270.00 FEET, PARALLEL WITH THE NORTHEAST LINE OF SAID LOT 4 TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING NORTHWESTERLY 84.35 FEET, PARALLEL WITH SAID NORTHEASTERLY LINE; THENCE NORTH 00°13'00" EAST, 227.61 FEET; THENCE NORTH 87°55'00" EAST, 305.54 FEET TO A POINT ON THE NORTHWESTERLY LINE OF THE LAND DESCRIBED IN THE DEED TO A.E. SWINDLER, A MARRIED MAN, RECORDED JANUARY 14, 1954 AS INSTRUMENT NO. 1955 OF OFFICIAL RECORDS; THENCE SOUTH 53°56'00" WEST, 119.00 FEET TO THE MOST WESTERLY CORNER OF LAST SAID LAND; ALSO BEING THE MOST NORTHERLY CORNER OF THE LAND

DESCRIBED IN THE DEED TO A.E. SWINDLER, A A MARRIED MAN,
RECORDED MAY 14, 1957 AS INSTRUMENT NO. 34982 OF OFFICIAL
RECORDS; THENCE SOUTH 21°55'00" WEST, 188.65 FEET ON THE
NORTHWESTERLY LINE OF SAID LAND TO THE MOST NORTHERLY CORNER OF
THE LAND DESCRIBED IN THE DEED TO JOHN N. VEVERS, ET UX,
RECORDED JANUARY 17, 1955 AS INSTRUMENT NO. 3331 OF OFFICIAL
RECORDS; THENCE SOUTH 53°56'00" WEST, 110.00 FEET ON THE
NORTHWESTERLY LINE OF SAID LAND TO THE TRUE POINT OF BEGINNING;

EXCEPT THAT PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST WESTERLY CORNER OF THAT PARCEL OF LAND
CONVEYED TO A.E. SWINDLER BY DEED RECORDED JANUARY 14, 1954 AS
INSTRUMENT NO. 1955 OF OFFICIAL RECORDS; THENCE NORTH 53°56'00"
EAST, 111.99 FEET ON THE NORTHWESTERLY LINE OF SAID PARCEL;
THENCE SOUTH 88°03'51" WEST, 66.56 FEET; THENCE SOUTH 20°39'00"
WEST, 68.05 FEET TO THE POINT OF BEGINNING.

Under the provisions of Government Code 27361.7, I certify under the penalty of perjury that the notary seal on the document to which this statement is attached reads as follows:

Name of Notary: JENNIFER R. HUETHER

Commission #: 1291887

Place of Execution: RIVERSIDE COUNTY

Date Commission Expires: FEB. 20 2005

Date: 3/12/02

Signature: Tom Foster
TOM FOSTER